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June 24, 2020

BY ECF

The Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

*Re: Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al., No. 19
Civ. 660 (E.D.N.Y.)*

Dear Judge Brodie:

We write on behalf of the Federal Defenders pursuant to the Court's Order dated June 12, 2020.

At the last conference before Your Honor, we discussed three principal issues: (1) planning relating to the resumption of in-person legal visiting, (2) capacity to handle requested legal VTCs and telephone calls, and (3) problems relating to legal mail. Unfortunately, we are unable to report significant progress on any of these.

As to in-person visiting, immediately following the June 12 conference, and at the government's specific urging that the Federal Defenders submit a detailed proposal for in-person visiting, we, in consultation with CJA lawyers, developed such a proposal. We sent that proposal to the government on June 15. (A copy is attached hereto as Exhibit A.) It sets forth suggestions for how the BOP can minimize the risks involved in in-person visiting once such visiting resumes, while simultaneously expanding VTC capacity—in recognition that robust remote access remains critical while the coronavirus pandemic continues.

We have received no response to the proposal since that time. On June 23, we followed up via email with the mediator, noting that we remained of the understanding that the BOP may open its doors as early as July 1, but that we had not received any feedback on our proposal or, indeed, any information whatsoever from the government about the resumption of in-person visiting. The mediator indicated that she was not presently able to provide any further information on the BOP's plans. Moreover, we understand from staff at both MDC and MCC that they have not been notified of or consulted by management regarding the process for reopening and the safety protocols that would apply.

As to VTCs and telephone calls, demand continues to outpace supply for the pretrial units at both the MDC and MCC. At the MCC, there is a particularly high demand for VTCs and telephone calls on units 7N, 11N, and 11S, and nearly as high a demand on 5S and 7S. As of today, there are 20 legal calls with clients at MCC that have been waiting at least 48 hours to be scheduled and that will not be able to occur until at least Monday because of a lack of capacity on the particular units. Similarly, at MDC, there is a particularly high demand for VTCs and telephone calls on the 4th, 5th, and 6th floors. As of today, there are 15 legal calls with clients at MDC that have been waiting at least 48 hours to be scheduled and that will not be able to occur until at least Monday because of a lack of capacity on the particular units.

We have continued to report capacity shortages to the government and the mediator, but have not received any information regarding efforts to increase capacity. In fact, the BOP seems to be moving in the opposite direction. The additional staff that the MDC recently had in place to accommodate evening calls were not at the facility this week, so no evening calls were possible at either institution.

As to legal mail, the Federal Defenders continue to receive reports from clients at both the MDC and MCC that the legal mail they receive has been opened before they receive it, as well as reports of lengthy delays in receiving legal mail. For example, at MDC, as recently as today, we received a number of reports of legal mail—sent by our office and with all of the required markings and information—being received by clients housed on the sixth floor already opened. At MCC, because of issues with delay in or non-receipt of legal mail, the Legal Department has recommended that attorneys send mail certified so as to verify that the institution actually received it, and what date it was received. For lawyers working out of their homes during the pandemic this may be difficult to do. The Federal Defenders have asked each facility if a legal mail box can be placed in the entry lobbies to provide another way to ensure the facility has received the legal mail (such legal mailboxes already exist in both facilities, but are currently located inside of the facilities and thus are not accessible to lawyers); neither facility has responded to this request yet. The delays cause real issues for clients being able to receive and review discovery, as well as for attorneys who need to obtain signed releases from their clients in order to get records that may be critical to negotiating a disposition or drafting a sentencing submission. We have asked if unit staff could help obtain signatures on release forms, a procedure that is regularly used at other BOP facilities and at non-BOP institutions such as Rikers Island, but the facilities have said they will not provide this assistance.

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The parties have a joint mediation call scheduled for tomorrow, at which we hope the government is able and willing to address the issues discussed above. We look forward to a productive conference on Friday.

Respectfully submitted,

/s/ Sean Hecker
Sean Hecker

cc: Counsel of Record (by ECF)
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